IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL WRIT PETITION NO.2787 OF 2005
In
P.O.T.A. Case No.1 of 2004

Ashrat Shafiq Ansari .... Petitioner
Vs.
State of Maharashtra .... Respondent

Shri Sushan Kunjuraman for the Petitioner.

Sarvasri S.R. Borulkar, Public Prosecutor, with D.S. Mhaispurkar, Addl. Public Prosecutor, for the State.

CORAM: R.M.S. KHANDEPARKAR & R.S. MOHITE, JJ.

DATED: DECEMBER 20, 2005

P.C:

1. By the present petition the petitioner is seeking reliefs in the nature of transfer of the proceedings in POTA Case No.1 of 2005 from the present Court to some other Court. Such transfer is sought on three grounds: firstly, that the prosecutor engaged in the case tutors the witnesses, secondly, the leading questions are posed to the witnesses and thirdly, the prosecutor uses derogatory remarks against the Advocates appearing for the accused in the course of the trial. It is the contention of the petitioner that inspite of these facts having been brought to the notice of the concerned Judged, no action is being taken in the matter and it results in biased and unfair trial.

2. As far as the three grounds which are mentioned above, without supporting material even prima facie establishing the contention, do not justify the claim of transfer of the case from one Court to another. It is to be noted that none of the grounds relates to the conduct of or in any manner relating to the functioning of the Court in relation to the case of the petitioner. Being so, on none of those grounds the question of transferring the case to any other Court can arise.

3. As regards the contention that no action is being taken by the Presiding Officer of the Court against the unfair treatment being given to the Advocates for the accused on behalf of the prosecution, apart from wild allegations, there is no concrete material in support of such allegations placed before us. No specific incidents have been disclosed with necessary supporting material. Being so, merely on such allegations it cannot be a ground for transfer of the case to another Court.

4. Be it as it may, if there is any such grievance of the nature alleged, certainly the petitioner can put forth his grievance in writing before the concerned Judge with a copy thereof addressed to the Hon’ble The Chief Justice of this Court. However, merely on allegations in that regard, it does not justify the transfer of the case to another Court.

5. Reference was made to applications which were filed before the Court below and the inaction on the part of the Presiding Officer to pass appropriate orders on those applications. Indeed, if the applications have been filed and no orders thereon have been passed for a considerable period of time, certainly it would disclose lethargy on the part of the concerned Court. It would be improper on the part of the Court to keep the applications pending without being disposed without any justification. Suffice to observe, in the circumstances, that if any application filed by the petitioner is not disposed of till this date, same should be disposed of after hearing the concerned parties as expeditiously as possible and in any case within a period of six weeks from the date of receipt of the copy of this order.

6. Grievance was also made regarding certain unwarranted observations made by the learned Special Prosecutor in the reply filed by him. In that regard, the learned Public Prosecutor appearing before us has submitted that care would be taken henceforth that replies are filed strictly in relation to the facts required to be replied, without the use of any unwarranted and harsh language and irrelevant submissions. As regards the language which was used in the reply dated 17-10-2005, the learned Public

Prosecutor has expressed regrets.

7. As no other point is canvassed in the matter, we do not find any justification for issuing any direction in the matter, except stated above.

8. The Registry to forward the copy of this order to the concerned Court forthwith.

9. The petition accordingly stands disposed of.

(R.S. Mohite, J.) (R.M.S. Khandeparkar)